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Supreme Court, U.S.
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No._02-1797

In The
Supreme Court of the United States

INDIAN CREEK CORPORATION
AND CURT DANIELS,
PETITIONERS

V.

STATE OF IOWA, ex rel., IOWA DEPARTMENT OF
NATURAL RESOURCES, 99 AG23542 AND

THE DISTRICT COURT OF JASPER COUNTY, IOWA,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE IOWA
DISTRICT COURT FOR JASPER COUNTY

PETITION FOR REHEARING

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14 pp

QUESTION PRESENTED FOR REVIEW

1. WHETHER THE IOWA SUPREME COURT ABUSED ITS DISCRETION AND VIOLATED THE IOWA CONSTITUTIONAL MANDATE BY REFUSING TO GRANT CERTIORARI TO THE PETITIONERS FOR REVIEW AND REMEDYING OF THE ILLEGALITY OF THE IOWA DISTRICT COURT'S DECISION.

STATEMENT OF PARTIES

The caption of the case in this court contains the names of all parties to the proceedings in the lower courts. Indian Creek Corporation is a family farm corporation owned and directed by Curt Daniels.

CORPORATE DISCLOSURE STATEMENT

Indian Creek Corporation is not owned by a parent corporation and there is no publicly held company that owns any stock in Indian Creek Corporation.

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PETITION FOR REHEARING OF WRIT OF CERTIORARI TO THE IOWA DISTRICT COURT

Curt Daniels respectfully requests that the Honorable Justices of the Supreme Court of the United States grant a rehearing of the writ of certiorari to review the judgment of the District Court for Jasper County Iowa rendered on November 19, 2001. In support of this request the following is set forth.

OPINIONS BELOW

Finding of Fact, Conclusions of Law and Judgment was entered on November 19, 2001 following a bench trial on October 24-25, 2001 in the District Court for Jasper County, Iowa.

Motion to Set Aside Judgment was filed on December 3, 2001 and denied by the District Court for Jasper County, Iowa on December 14, 2001.

Notice of Appeal to the Iowa Supreme Court was filed on January 9, 2002. On its own motion of September 5, 2002 the Iowa Supreme Court ruled that the Appellants' (petitioners herein) Motion to Set Aside Judgment was untimely and issued an Order October 22, 2002 dismissing Appellants appeal.

Appellants (petitioners herein) subsequently filed a Petition for Writ of Certiorari to the Iowa Supreme Court on November 13, 2002, an Order was issued January 8, 2003 denying Appellants Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

The Judgment of the District Court for Jasper County, Iowa was entered on November 19, 2001. Appeal to the Iowa Supreme Court was dismissed on October 22, 2002. Petition for Writ of Certiorari to the Iowa Supreme Court was denied on January 8, 2003. It is from this final order of January 8, 2003 that Petitioner brought the Petition for Writ of Certiorari which was dismissed October 6, 2003. The jurisdiction of this court is invoked pursuant to 28 USC Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioners were deprived of a constitutional right to a review and remedying of the Iowa District Courts illegal action.

Iowa law provides that a writ of certiorari from the Iowa Supreme Court to an inferior court will lie when the inferior court is alleged to have exceeded its jurisdiction or to have acted illegally. Hadjis v. District Court 275 NW2d 763 (Iowa 1979), State v. West 320 NW2d 570 (Iowa 1982) Illegality exists when the findings on which the court has based its conclusions of law do not have substantial evidentiary support or when the court has not applied the proper rule of law. Whitlock v. Iowa District Court 497 NW2d 891 (Iowa 1993), Bryson v. Iowa District Court 515 NW2d 10 (Iowa 1994).

Indian Creek Corporation and Curt Daniels, Petitioners, filed a writ of certiorari with the Iowa Supreme Court in which the Iowa District Court was the Defendant. The writ of certiorari referenced the appeal to the Iowa Supreme Court which clearly described the actions of the District Court that were without substantial evidentiary

support and/or the District Court misapplied the rule of law. The illegal actions by the Jasper County District Court are briefly discussed in the petition for writ of certiorari filed with this court.

The Iowa Supreme Court's failure to grant the petition for writ of certiorari was an egregious denial of the petitioners fifth and fourteenth amendments guaranteeing rights to property and due process of law; egregious because the Iowa Supreme Court had before it the petitioners' and appellee's briefs. Petitioner's appeal to the Iowa Supreme Court was denied. Thus petitioner's right to a review on the merits of the decision in the Jasper County District Court was limited to a grant of the petition for writ of certiorari.

Certainly no court, especially the courts of Iowa, desire not to hear hog production/environmental cases. The Iowa Supreme Court had ample judicial notice that hog production is a contentious issue that pits the public and the Iowa Department of Natural Resources in an adversarial relationship with hog producers. However, the Iowa Courts had a duty to hear and decide the case fairly. The Iowa Supreme Court determines its jurisdiction. Iowa Constitution, Art. V Section 4, Amended by Iowa Const. Amend. 21, Section 1; this constitutional provision provides that:

(t)he Supreme Court....shall have power to issue all writs and process necessary to secure justice to all parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state. State v. Davis, 493 NW2d 820, 822 (Iowa 1992).

A writ of certiorari shall be granted when a court exceeds its proper jurisdiction or otherwise acts illegally. Iowa R.CiV.P. 1.1401 emphasis added, Amro v. Iowa District Court, 429 NW2d 135 (Iowa 1988).

The granting by the Iowa Supreme Court of the petition for writ of certiorari would have provided equitable

relief to Indian Creek Corporation. This court has stated that equitable relief should lie when:

1. Irreparable harm will result if not granted.
2. The case was erroneously decided below and
3. Other parties and the public are not disadvantaged by the grant of equitable relief.

Lucas v. Townsend 108 S.Ct. 1763 (1988) 486 U.S. 1301, 100 L.Ed2d 589.
Beame v. Friends of the Earth, 98 S.Ct. 4 (1977) 434 U.S. 1310, 54 L.Ed.2d 23.
Barnes v. E. Systems, 112 S. Ct. 1 (1991) 501 U.S. 1301, 115 L.Ed.2d 1087.

In this case the State of Iowa is not disadvantaged by a review of the merits of the case. Indian Creek Corporation and Curt Daniels have suffered irreparable harm to reputation and severe economic injury if the decision is not reviewed. Any cursory reading of the briefs to the Iowa Supreme Court would alert the reader to the errors of the Jasper County District Court. Other parties and the public are not disadvantaged by a grant of relief; a review of the District Courts decision. The DNR never alleged pollution or environmental harm in any way, nor was an impending threat of environmental harm alleged. The community surrounding the Indian Creek facilities made no nuisance complaints. The public was not served by the District Courts decision, and the public or some other party would not be disadvantaged by a review on the merits of the District Court's decision.

Indeed the public is served when Government agencies are reined in and forced to follow the legislative mandates instead of their own agenda. Accordingly, resolution of the issue whether administrative actions are constitutional requires analysis of the governmental and private interests that are affected. Arnett v. Kennedy 94

S.Ct. 1633, 416 U.S. 134, 40 L.Ed.2d 15 (1974). The controlling legal principals are plain. The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Cooper v. Aaron 78 S.Ct. 1401, 1409, 358 U.S. 1, 3 L.Ed.2d 5 (1958).

REASONS FOR GRANTING WRIT

The Supreme Court of Iowa failed in the Constitutional duty to correct the illegality of the inferior court. Illegal state actions springing from improperly trained and supervised regulators, ratified by courts without question, and denied judicial review erodes the consent system of governance. Correction by the U.S. Supreme Court is necessary to establish that state courts cannot ignore their duty in the search for justice.

CONCLUSION

The Iowa Supreme Court acted arbitrarily and capriciously by failing to exercise its power and responsibility to grant the Petition for Writ of Certiorari. The failure of the Iowa Supreme Court to grant the Writ of Certiorari left not reviewed and uncorrected the District Courts decision which is manifestly unjust and irreparably injurious to the petitioner.

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PROOF OF SERVICE

I, Curt Daniels, do swear or declare that on this date, October 30, 2003, as required by Supreme Court Rule 29 I have served three copies of the enclosed REHEARING OF PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

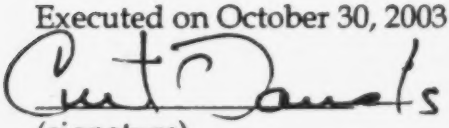
The names and addresses of those served as follows:

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Clerk of the Iowa District Court
Jasper County Courthouse
Newton, Iowa 50208

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on October 30, 2003



(signature)

CERTIFICATION OF COUNSEL

Counsel, Curt Daniels, certifies that the attached Petition for Rehearing is on substantial grounds not previously presented. The petition for Rehearing is restricted to grounds not previously presented and is submitted in good faith and not for delay.

Executed on October 30, 2003.



Curt Daniels, Attorney